

Testimony of Ellen Pfister
Feb. 4, 2009
In opposition to HB 278
House Committee on Natural Resources

Northern Plains Resource Council was approached a year ago concerning this concept. Nothing was heard from the interested parties, i. e., the Department of Environmental Quality and the Montana Coal Council, until January 2009. Apparently DEQ drafted this bill on behalf of the Montana Coal Council. As the issue was presented to Northern Plains, these would be small areas, such as the occasional sedimentation pond bottom and parts of roads and power lines. However, the concept of up to 20% of a permit being subject to "Limited Vegetative Cover" was never discussed, and we believe does not comply with the federal law which underpins the state reclamation law. This would allow a mine like the Rosebud Mine to have over 4000 acres with substandard reclamation and climbing as the mine expands. The effects of the substandard reclamation on the reclamation which did meet standard would be hard to predict.

Section 816.116 CFR deals with "Revegetation: Standards for Success" (b)(4) contains the only shortened time allowance on this matter: "For areas to be developed for industrial, commercial, or residential use less than 2 years after regrading is completed, the vegetative ground cover shall not be less than that required to control erosion." However, Section 816.116 (b)(5)(c)(3) contains the western standard for the period of responsibility for bond release. "In areas of 26.0 inches or less average annual precipitation, the period of responsibility shall continue for a period of not less than: (i) Ten full years, except as provided in paragraph (c) (3) (ii) below (a paragraph that deals with remining permits). Vegetation parameters identified in paragraph (b) of this section shall equal or exceed the approved success standard for at least the last two consecutive years of the responsibility period."

CFR Section 816.11 (b) (5) (c) allows an exemption from the vegetation standards by planting a quick-growing temporary cover for stabilization as long as there is a plan to establish permanent vegetation which meets the permanent standards in the permit and reclamation plan. CFR Section 816.150 (f) Reclamation reads as follows:

A road not to be retained under an approved postmining land use shall be reclaimed in accordance with the approved reclamation plan as soon as practicable after it is no longer needed for mining and reclamation operations.

Roads needed for the postmining land use are allowed to be left open, if planned for in the reclamation plan.

CFR Section 816.56 deals with Postmining rehabilitation of sedimentation ponds, diversions, impoundments, and treatment facilities. Those facilities are to meet the standards of Chapter 816, and the final sentence reads "The operator shall renovate such structures if necessary to meet the requirements of this chapter and to conform to the approved reclamation plan." I would wonder if the bottoms of sedimentation ponds which had standing water in them would not take several years to revegetate successfully because of the changes that standing water makes in soils.

CFR 816.181 deals with "support facilities", which are not defined, but are to be . . ."operated with a permit issued for the mine or coal preparation operation to which it is incident or from which its

operation results." There is no exemption from the vegetation reclamation standards for support facilities.

The definitions in HB 278 are expansive definitions, not limiting definitions. They can be expanded to cover many things. The implementation of HB 278 could allow bond release in as little as six months after planting. Ten years is the time frame to establish that vegetation is permanent, and nearly any other standard in MCA 82-4-235 is arguable. The pressure will be on for Phase III bond release as soon as possible, which will lead immediately to Phase IV bond release, the phase which will supposedly determine how the water regime in a basin has been reclaimed; and perhaps the operator can achieve final bond release before the failure of "Limited Vegetative Cover" can be determined.

All of these problems should have been addressed in the reclamation planning years ago as required by both federal and state law. Why were these problems not addressed in the planning years ago? As this bill stands now, Northern Plains cannot support it.

Submitted by,
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